IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3235 of 2005()

LPC.52/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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PETITIONER: ACCUSED:

P.P. SAJEENDRAN, S/O. ANANDAN,
KRISHNA VILAS, P.O. TEMPLE GATE,
THIRUVANGAD, THALASSERY, NOW RESIDING AT
P.O.BOX NO.25, DUBAI, U.A.E.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: COMPLAINANT & STATE:

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1. THE SUB-INSPECTOR OF POLICE,
THALASSERY POLICE STATION,
THALASSERY.

2. THE STATE OF KERALA, REPRESENTED
BY THE DIRECTOR GENERAL OF PROSECUTION
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.R3: SHIJINA K.C., D/O. ANANDAN,
KIZHAKKA CHANDROTH VEEDU
KODIYERI, P.O. PARAL, KANNUR DISTRICT.
(ADDL.R3 IMPLEADED AS PER ORDER ON CRL.M.APPL5422/06
DATED 16-10-2006.)

R1 & 2 BY PUBLIC PROSECUTOR SRI C.M. KAMMAPU.
ADDL.R3SRI.C.P.PEETHAMBARAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 26-9-2007, THE COURT ON 05/10/2007, PASSED THE FOLLOWING:

ORDER ON CRL.M.A.NO.12023/2005 IN CRL.M.C.3235/2005
DISMISSED.

5-10-2007. SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN, J.

CRL.M.C.NO. 3235 OF 2005

Dated 5th October, 2007

ORDER

The sole accused in L.P.C. No.52/2005 of the Judicial First Class Magistrate's Court, Thalassery is the petitioner in this Criminal M.C. in which he prays that all the proceedings in L.P.C. No.52/2005 of the court below and Annexure-3 complaint and Annexure-5 final report be quashed as the same will amount to abuse of process of court.

2. Originally Annexure A3 complaint was filed before the Judicial First Class Magistrate Court, Thalassery by the de facto complainant which was transmitted to the Thalassery Police Station under Section 156(3) of Cr.P.C., on the basis of which Crime No.623/2004 was registered against the accused therein for the offences punishable under Sections 498A, 403, 420 read with Section 34 of I.P.C. After completing the investigation, the Police has filed a final report i.e. Annexure-4. While filing the above report, Police had deleted Sections 403, 420 and Section 34 and also deleted accused Nos.2 and 3 who were arrayed as accused in the complaint. Now the petitioner alone

is the accused against whom the only charge levelled is under Section 498A of I.P.C. The petitioner submit that the complaint is filed only to harass the petitioner since he had sent Annexure-A1 lawyer notice dated 29.6.2004 for divorce and the same was received by the de facto complainant on 5.7.2004. **So, according to the the petitioner, the complaint was filed to harass the petitioner and hence all proceedings thereon are liable to be quashed.**

3. I have heard the counsel for the petitioner, the counsel appearing for the additional 3rd respondent and the Public Prosecutor.

4. Counsel appearing for the petitioner submitted that the marriage between the petitioner and the 3rd respondent was taken place on 13-1-2000 and within two weeks from the date of marriage, he had left for Dubai for joining his work. It is further submitted that even though the period was short during which they were lived together, there was no occasion of any kind of cruelty towards his wife and there were no quarrel with respect to any issue. It is the specific case of the petitioner that he was not aware of the mental illness of the 3rd respondent prior to the marriage and the

same was suppressed from the petitioner and when the petitioner came to know regarding the mental illness of the 3rd respondent, he had sent a lawyer notice dated 29-6-2004 for divorce. The divorce notice is produced along with the Crl.M.C. which marked as annexure A1 and the same was received by the 3rd respondent on 5-7-2004. In support of the above submission, the learned counsel appearing for the petitioner invited my attention to various passages contained in annexure A3 complaint. In the 2nd page of annexure A3 complaint, the de facto complainant stated that after the marriage, herself and the petitioner were in good terms with love and pleasure and he had provided all what required by the de facto complainant and thereafter on 31-1-2000, the petitioner had gone abroad. It is also stated in the complaint that she was directed to keep her gold ornaments in the bank locker and according to the de facto complainant, the gold ornaments were entrusted with the 2nd accused in the complaint. It is further stated that after the petitioner went abroad, accused 2 and 3 scolded her. Thus, going by annexure A3 complaint, it can be seen that there is no allegation against the petitioner regarding any kind of cruelty.

What ever the allegations contained in the complaint are only against accused 2 and 3, but they were deleted from the array of accused at the time of filing annexure A4 final report.

5. It is also pointed out by the counsel that there was no demand for dowry or gold ornaments from the part of the petitioner. The learned counsel took me through the statement of the de facto complainant which she gave to the police during investigation. On a perusal of section 161 statement of the de facto complainant, it can be seen that her specific version is that before the betrothal, the petitioner came to her and on seeing her, he liked and loved her and there was no demand for dowry or gold for marriage. In the said statement, the de facto complainant has stated that she had gone to her parental house on her own free will and that was not endorsed or favoured by her husband. The further case of the de facto complainant is that even when the husband came after 2 ½ years from abroad, he had not cared to see her or to take her back to the matrimonial home. While giving her section 161 Cr.P.C. statement, she had stated that 4 years are over after the marriage and she was in a position, as it appears that , she had been abandoned by the

husband, for which she had mental agony. Thus going by anenxcure A3 complaint and further, section 161 Cr.P.C. statement of the de facto complainant, it can be seen that there is no allegation against the petitioner so as to attract the offence under section 498A of IPC.

6. It is also pertinent to note that though annexure A3 complaint was filed before the court and a crime was subsequently registered by the police, on their investigation, the police was satisfied that no offence under sections 403 and 420 and even 498A IPC are attracted against accused 2 and 3 and therefore accused 2 and 3 were deleted from the array of accused and also the offence under section 403 and 420 of IPC were deleted. Going by annexure A3 complaint and section 161 Cr.P.C. statement of the de facto complainant, it is to be noted that what all allegations available are against accused 2 and 3 only but they were deleted from the array of accused. But in the case of petitioner, there is not even a whisper so as to attract section 498A IPC against the petitioner.

7. The learned counsel appearing for the additional 3rd respondent argued that even though the facts or allegations

constituting the offence under section 498 A IPC against the petitioner are insufficient, it is likely to come out at the time of evidence and during the course of trial and therefore, the charge against the petitioner under section 498A will sustain. I am afraid to accept the above submission. In a proceedings under section 482 Cr.P.C, what this court expected is to examine whether allegations and materials on record are available to attract section 498A of IPC. In the light of the above discussion and on an overall appreciation of materials on records, it can be seen that no offence under section 498A of IPC is disclosed against the petitioner.

8. The petitioner has got a specific case that when he came to know the mental illness of the de facto complainant, he had caused to send annexure A1 lawyer notice on 29-6-2004 for divorce and the same was received by the de facto complainant on 5-7-2004. It is the further case of the petitioner that after receiving annexure AI notice on 5-7-2004, the de facto complainant had chosen to file annexure A3 complaint dated 8-7-2004 before the court below. So, according to him, annexure A3 complaint was filed only because the petitioner had sent annexure A1 notice and the

intention behind the filing of annexure A3 complaint is to harass the petitioner. Thus on this materials, learned counsel appearing for the petitioner submitted that annexure A3 complaint is instituted with oblique motive and the same will amount to vexatious proceedings and it is nothing but an abuse of the process of court. The above submission, according to me, has some force and I have no hesitation to accept the same in favour of the petitioner.

9. On going through the available materials, it is crystal clear that no offence under section 498A of IPC is disclosed against the petitioner. Even the police, after investigation on the basis of annexure A3 complaint, came into a definite conclusion that no offence under section 498A is disclosed against accused 2 and 3 in annexure A3 complaint and also no offence under section 403 and 420 are disclosed against any of the accused. Therefore, the fact remains is that there is no specific allegation against the petitioner in order to attract section 498A and her own averments in annexure A3 as well as 161 statement would show that there was no ill-treatment or demand for dowry or gold ornaments from the side of the petitioner, either directly or indirectly, till the filing of

annexure A3 complaint. Therefore, it is just and proper to quash annexure A3 complaint and annexure A4 final report.

10. In the result, annexure A3 complaint and annexure A4 final report in LPC No.52/2005 and all proceedings thereon on the file of the Judicial First Class Magistrate's court, Thalassery are quashed and the Crl.M.C. is allowed.

V.K.MOHANAN, JUDGE.

Kvm/ -

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: